IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WP(C).No. 22962 of 2004(H)

PETITIONER:

DR.P.K.MOIDEEN,
CIVIL SURGEON (RTD.), AGED 64 YEARS,
S/O. P.K.KADER, RESIDING AT "SHARMILA",
AYYANTHOLE P.O., THRISSUR, PIN-680 003.

BY ADV. SRI.K.P.DANDAPANI.

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   HEALTH & FAMILY WELFARE DEPARTMENT,
   THIRUVANANTHAPURAM.

2. **DIRECTOR OF HEALTH SERVICES,**
   THIRUVANANTHAPURAM.

3. **DISTRICT MEDICAL OFFICER OF HEALTH,**
   THRISSUR.

4. **ACCOUNTANT GENERAL (A & E), KERALA,**
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMARAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.22962/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER G.O. MS. NO. 217/96/H&FWD DTD. 23/04/1996 ISSUED BY GOVT. OF KERALA.

EXT.P.2: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN O.P. NO. 6087/1998-Y DTD. 11/12/2002.

EXT.P.3: COPY OF THE ORDER NO. P-05/PENA/1900/11/00-01/1103 DTD. 17/01/2001 ISSUED BY THE R.4.

EXT.P.4: COPY OF THE G.O. (RT). NO. 2212/03/H&FWD DTD. 24/07/2003 ISSUED BY THE GOVT. OF KERALA.

EXT.P.5: COPY OF THE LETTER NO. PEN/CASE/69/AV/03-04/92 DTD. 30/04/2004 ISSUED BY THE R.4.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.22962 OF 2004

Dated this the 17th day of July, 2007

JUDGMENT

On the ground of unauthorised absence, the petitioner was removed from service with effect from 1.2.1982. By judgment dated 7.4.1992 in O.P.No.8287/87, the Government Order removing him from service was set aside and there was a direction to re-consider the whole issue.

2. As stated in Para 2 of the writ petition, the episode leading to his removal from service was that he did not re-join duty after enjoying leave availed for foreign service. His request for extension of leave on the ground that he was in the middle of his private assignment was then not conceded to by the Government.

3. By Ext.P1 order, consequent on the judgment in O.P. No.8287/87, the petitioner was reinstated deferring orders as to how his period of absence was to be treated. Going by the

pleadings in para 7 of the writ petition, first respondent issued G.O.(Rt) No.305/98/HS FWD dated 7.2.1998 treating the entire period from 1.2.1986 to 30.11.1995 as leave without allowances, though with the rider that the period would not count for pensionary benefits. That decision was quashed by this Court as per Ext.P2 judgment holding hat the Government have accepted the position that the absence was on account of the delay in reinstatement. This Court took the view that the regularisation of the period of absence is only for the purpose of getting pensionary benefits and not for any other purpose. Accordingly, the aforesaid Government Order was quashed and the first respondent was directed to pass consequential orders, including as to the payment of monetary benefits taking into account the entire period of the petitioner's service. Following that, Ext.P4 has been issued by the Government treating the entire period as leave. The leave available to his credit as Earned Leave and Half Pay Leave were granted and the remaining portion was regularised as leave without allowances, on condition that the period of leave without allowances will not count for any service

benefits except for pension. This means that the period till 12.4.1986 would be treated for purposes other than for pension also, while the period from 13.4.1986 to 30.11.1995 will be teated only for the purpose of pension. The result is that the pensionable service of the petitioner will extend to 30.11.1995.

4. The reliefs sought for in this writ petition are for a direction to quash Exts.P4 and P5 to the extent it denies service benefits from 13.4.1986 to 30.11.1995 and for a direction to treat that period as duty and to fix pay notionally and recompute pensionary benefits accordingly. A declaration as to deemed continuance of the petitioner in service till 30.11.1995 is also sought for, with certain attendant reliefs.

5. Having regard to the facts noticed above, I find no legal infirmity in Ext.P4 decision of the Government treating the period of leave without allowances as inuring only for the purpose of counting the pensionable service of the petitioner, as

a result, the relief by way of pension has to be on the basis of such reckoning of the period of service.

In the result, this writ petition is allowed partly, declaring that the pension due to the petitioner has to be calculated on the basis of his total length of service as specifically stated in para 4 of Ext.P4. The writ petition is dismissed in all other respects. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.